

OGC HAS REVIEWED.

Chief, Foreign Documents Division

Chief, Support Branch

Safeguarding the Government and Personnel against Claims Resulting from Inadvertent Infringement of Copyrights in Exploitation of Foreign Documents

1. Foreign Documents Division's problem relating to safeguarding against copyright infringement developed in November 1953 with Executive Order No 10501 which eliminated the classification "RESTRICTED".

Initially, to cover our use of copyrighted material, we resorted to use of the newly created control "FOR OFFICIAL USE ONLY" in conjunction with a caveat concerning laws relating to copyright, limiting the material to "Official Use Only", and placing the onus of violation on the releasing individual.

2. Since 1953, our own uneasiness in the publication of copyrighted material has resulted in several revisions of the caveat used in conjunction with the "For Official Use Only" control.

3. In a review of our copyright procedures in October 1955, the Office of the General Council pointed out a disturbing feature of the law which immunized the Federal Government from copyright infringement but did not relieve Federal employees of liability for such. This feature was further complicated in the General Council citation by the provision "if the suit for copyright infringement is brought by an American citizen for infringement of the copyright procured under a Federal Law." There was no expansion as to the field of liability if the suit were brought by a non-citizen.

4. In October 1958, particularly in the interest of safeguarding our expanded publication efforts [REDACTED] we [REDACTED] conferred with Mr. George D. Cary, Copyright Office, Library of Congress. He stated that few registrations are made with the Copyright Office by publishers or authors in Soviet Europe satellite nations with which the US has bilateral reciprocal copyright agreement. At that time no Soviet Bloc nation belonged to the Universal Copyright convention (UNESCO) to which the US had subscribed.

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*A roundup of the
copyright situation as
of 25 October 1960*

Mr. Cary recommended that, should we wish to publish unclassified reports prepared from Soviet Bloc Satellite publications, it would probably be best not even to mention the existence of copyright.

As for Western Europe material, he discouraged the release of an unclassified report with a copyright warning. In such cases he recommended that steps be taken to get the permission of the copyright holders previous to release.

5. As a result of this advice, we proceeded to use no copyright warning on publications derived from Soviet Bloc materials. In unclassified reports from Western Europe sources which involved copyright restrictions we applied a revised copyright warning, as suggested by Mr. Cary, under the restrictive control "For Official Use Only." It was agreed with the Library of Congress and OTS/Commerce that any clearances necessary for their publication and dissemination for nonofficial consumption would be effected by them.

6. In the May 1960 NSF bulletin, Scientific Information Activities of Federal Agencies, it was noted that "in general, all reports...prepared by [redacted] are available only for U.S. Government use and not for publication...to protect the publication privileges of the European scientists."

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7. Our most recent "flap" in the copyright field came last January when we were informed by the American Embassy Prague that Czechoslovakia was now a party to the UNESCO copyright convention. To cover this development we have applied the same procedure to Czechoslovak copyrighted material as we have done to that of Western Nations. To control such publications more thoroughly, and thus safeguard ourselves more completely, we have also applied the "For Official Use Only" control to each and every page of such publications as contained copyrighted material.

8. We have recently encountered Public Law 86-726, enacted 8 September 1960. This law amends a previous United States Code section covering inventions and patents so as to include copyright. This amendment appears to safeguard any person or contractor, and makes recourse by the copyright holder through action against the United States in the Court of Claims for recovery of his damages.

However, a second paragraph of the amendment provides that the section shall not apply to any claim arising in a foreign country.

In his October 1955 review, the General Council pointed out "that the "United States" is subject to suit by foreign nationals for copyright infringement if the country of the foreign national concerned and the United States have concluded an international copyright agreement."

9. The following seem apparent:

a. We are conscientiously attempting to restrict dissemination of copyrighted material to the use of official circles only.

b. This appears to be a practice of other Government offices faced with our problem, [REDACTED]

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c. We are clearly warning official users of the copyrighted material that should they pass on such publications for unofficial use they are subjected as individuals to claim for infringement of copyright.

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[REDACTED]

e. It would appear from the September-inacted amendment to the Public Law that our employees, contractors, and supervisors concerned are safeguarded against personal suit in the event of copyright infringement committed against a citizen holder of the copyright.

f. It appears that the Government is subjected to suit by foreign nationals for copyright infringement but it is unclear as to whether such suit also can be carried against the Government employees concerned, as individuals.

10. Subject to the human frailty of inadvertently overlooking a copyright statement or symbol, I think we may reasonably conclude that we have taken required measures to limit dissemination of copyrighted material to a reasonable field of government users.

Our limited printing and dissemination with no profit involved would seem to constitute minimum damage to any copyright holder and so, therefore, discourage any claim against Government or employee-contractor.

For greater protection, it appears we have recourse only to (a) more restrictive classification or controls, or (b) preparing copyrighted material in minimum number of copies not for publication.

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